IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.7.2006

C O R A M:

THE HONOURABLE MR. JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE M. JEYAPAUL

CRL.A.NO.401 OF 2004

Ramesh .. Appellant/Accused

-Vs.-

The State by:
Inspector of Police
Vaniyambadi. ..Respondent/Complainant

Appeal against the judgment dated 23.12.2003 in S.C.No.355 of 2002 on the file of Principal Sessions Judge, Vellore.

For Appellant : Mr.G.Natarajan

For Respondent : Mr.N.R.Elango, APP

J U D G M E N T

(Judgment of the Court was delivered by
R. Balasubramanian, J)

The appellant in this appeal stands convicted in S.C.No.355/2002 on the file of the Court of Sessions, Vellore, for offences under sections 302 and 324 I.P.C. For the former offence, he stands sentenced to undergo imprisonment for life and for the latter offence, he stands sentenced to undergo one year rigorous imprisonment. The sentences were directed to run concurrently. Hence the present appeal. Heard Mr.G.Natarajan, learned counsel appearing for the appellant and Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the State.

2. The prosecution case is that, at about 4.00 p.m on 24.02.2002, the accused murdered his mother by stabbing her on her stomach with a knife indiscriminately, resulting in her death and in the course of the same transaction, he caused an injury on P.W.1 thereby punishable under sections 302 and 324 I.P.C. To substantiate their case, the prosecution examined P.Ws.1 to 10

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besides marking Exs.P.1 to P.15 and M.Os.1 to 6. The defence marked Exs.D.1 to D.3. A Doctor was examined as Court Witness No.1. Through the court witness, Exs.C.1 and C.2 came to be marked. P.W.1 is the daughter of the deceased and sister of the accused. Her parents were working in the Government Hospital at Vaniyambadi as scavengers. Her father retired two years prior to her mother, who is the deceased in this case. P.W.1 was living with her parents. P.W.2 was also living with them. On her mother retiring, her retirement benefits were settled. Out of that retirement benefits, she spent a sum of Rs.65,500/- in purchasing a house in the name of P.W.1, in which house only, she was living with her parents. The accused was not married. However, he used to come to P.W.1's house often and take money from his mother for his day-to-day expenses, including for food. P.W.1 and her mother used to give money. However, whenever they don't give money, the accused used to pick up a quarrel with them. The accused was also quarrelling with his mother for not giving him any share in the retirement benefits, which she got. At about 4.00 p.m on 24.02.2002 (occurrence day), P.W.1 was inside the house along with her mother (since deceased). The accused called his mother and on being told by P.W.1, her mother went out. Immediately, P.W.1 heard her mother crying, which made her run out of the house. At that time, she noticed the accused stabbing her mother with a knife in her stomach and in the back. Her mother started bleeding and fell down. When P.W.1 attempted to prevent the accused from further onslaught, she received an injury on her left hand. P.W.1 shouted, which attracted the attention of the neighbours. The accused, dropping the knife, ran away. M.O.1 is the knife used by the accused. P.W.1 took her mother to the Government Hospital at Vaniyambadi, where, the Doctor, on examination, pronounced her dead. Then she went to the police station, where she gave the complaint, in which she had put her signature. Ex.P.1 is the said complaint.

3. P.W.10 is the Inspector of Police in the Investigating Police Station, before whom, at about 5.30 p.m on the occurrence day, P.W.1 appeared and narrated the complaint, which he reduced into writing. After reading it over to her, he took her signature in it. Ex.P.1 is the said complaint, which he registered in his police station crime No.138/2002 for offences under sections 302 and 324 I.P.C. Ex.P.10 is the printed first information report. He sent the express records to the court as well as to the higher officials. P.W.10 sent P.W.1 with a police medical memo to the hospital for treatment. He reached the scene and in the presence of P.W.5 and another, prepared Ex.P.2, the observation mahazar and Ex.P.11, the rough sketch. From the scene of occurrence, in the presence of the same witnesses, he recovered blood stained earth and sample earth. At 9.30 p.m on the same day, he arrested the accused in the presence of P.W.6 and another and examined him. At

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that time, the accused gave a voluntary confession statement, the admissible portion of which is Ex.P.4. Pursuant to Ex.P.4, M.O.1 came to be recovered at about 10.00 p.m in the presence of the same witnesses under a mahazar. Then the accused was sent for judicial remand. From 8.00 a.m till 10.00 a.m on 25.02.2002, he conducted inquest over the dead body and prepared Ex.P.12, the inquest report. During inquest, he examined P.Ws.1 to 4 and others and recorded their statements. After inquest, he sent the dead body with a requisition for post mortem through P.W.9.

4. P.W.9 accordingly accompanied the dead body with the requisition for post mortem to the hospital. After post mortem, he removed M.Os.2, 4, 5 and 6 from the dead body and handed over the same to the investigating officer along with his special report Ex.P.9. P.W.8 is the Doctor, who, on receipt of the dead body and the requisition for post mortem, did post mortem at 11.00 a.m on 25.02.2002. During post mortem, he found various symptoms as noted by him in Ex.P.8, the post mortem report. The symptoms noted are as hereunder:

"External Injuries:-

Punctured wound seen over the epigastrium in anterior abdomen wall 3.5 cm. Length into 1 c.m. Breadth into 8 c.m. depth, entering into the abdomen cavity. The shape of wound at the point of the entry is eliptical.

2. Punctured wound seen over the right hypochondrium area . Eliptical shape 3.0 c.m. X 1 c.m. X 4 c.m.

3. Incised wound over the right thigh in the mid 1/3 about 2 c.m. Length 1 c.m. Breadth.

4. Punctured wound seen over the medial aspect of right thigh about 1 x 1 x 1 c.m. (L x b x d).

5. Incised wound length 2 c.m. X 1 c.m. Breadth seen over the right lower limb below the knee in lateral aspect.

6. Incised wound seen over dorsum of hand over base of left thumb 2 x 1 x 0.5 c.m.

7. Incised wound over base of left index finger 1 c.m. X 0.5 c.m. X 0.5 c.m.

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8. Punctured wound seen on the left side of trunk over the left scapula 3 x 1 x 1.5 c.m. (L x b x d)

9. Punctured wound seen over the back of trunk in left inter-scapula area 3 c.m. x 1 c.m. x 6 c.m. length breadth, shape eliptical at point of entry.

10. Punctured wound seen over the left loin area 3 c.m. x 1 c.m. x 10 c.m. wound enter into the abdomen cavity.

11. Punctured wound seen over the left lion area 3 c.m. x 1 c.m. x 7 c.m. seen over the back of trunk over the right side lower chest wall.

12. Punctured wound 3 c.m. x 1 c.m. x 7 c.m. seen over the back of trunk over the right side lower chest wall.

13. Abrasion seen over the left knee.

Internal Injuries:-

Head and Skull : Intact, Brain and Meninges : Pale. Thorax Hyoid bone : Intact. Ribs : Intact, Heart Ventricles : Empty C/s Pale. Lungs : Right lungs lower lobe punctured wound seen. Left lung punctured wound seen in the posterior aspect of lung in lower lobe. Pleural cavity filled with blood. Abdomen – Stomach empty. Liver, Right lower lobe : punctured wound seen, Kidneys : Normal, Spleen : Normal, Peritoneal cavity filled with blood."

The Doctor opined that death is due to damages to vital organs. According to him, a weapon like M.O.1 could have caused the injuries found on the dead body. All the injuries noted by him in Ex.P.8 would cause death instantaneously.

5. P.W.2 is the daughter-in-law of the deceased and the accused is her brother-in-law. She had deposed that the deceased out of her retirement benefits spent a sum of Rs.65,500/- for purchasing a house in the name of P.W.1 and that the accused was pestering the deceased for a share in the retirement benefits which she got. The accused also used to ask the deceased to give her money to meet his day-to-day expenses including food. Sometimes

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P.W.1 used to give money and sometimes she won't. In the later occasion, the accused used to quarrel with P.W.1. P.W.2 is residing 50 feet on the west of P.W.1's house. On the occurrence day, when she was in the house, she heard a distress cry of her mother in law, which made her come out of her house along with her husband. At that time, she saw the accused stabbing his mother on the stomach and hand and her mother-in-law fell down with bleeding injuries. However she would admit that she cannot identify the weapon used by the assailant at that time, since she failed to notice it in the commotion. Then P.W.1 brought an Autorickshaw in which her injured mother-in-law was taken to the hospital. When P.W.1 intervened to save her mother from further onslaught by the accused, she also received an injury on her hand. P.W.3 is the son-in-law of the deceased and husband of P.W.1. His evidence about the entire family staying together; the deceased purchasing the house in the name of P.W.1 out of her retirement benefits; the accused pestering his mother for money and as to how the occurrence took place, is on the same lines as spoken to by P.W.1. P.W.4 is the father of the accused. His evidence also shows the manner in which the accused was conducting himself as spoken to by P.Ws.1 and 3 and the accused often picking up a quarrel with his mother whenever his demand for money was not met. According to him on the occurrence day evening, P.W.1 called him, which made him to come out of the house, at which point of time, he noticed the accused stabbing his mother leading to her fall on the ground. Then his injured wife was taken to the hospital and the accused ran away from the scene. He also fairly admitted that he could not identify the weapon used by the assailant at that time. P.W.5 is the son of the deceased and husband of P.W.2. His evidence also, on the entire episode, is as spoken to by the witnesses referred to earlier. He had also witnessed the occurrence. He identified M.O.1 as the weapon of offence used by the accused. He witnessed the preparation of Ex.P.1, the Observation Mahazar and recovery of M.Os.2 and 3 under Ex.P.3. P.W.6 witnessed the arrest of the accused; his examination and recording of his confession statement, the admissible portion of which is Ex.P.4, pursuant to which M.O.1 came to be recovered under Ex.P.5. P.W.7 is the Casualty Medical Officer in the Government Hospital at Vaniyambadi. On the occurrence day in the evening P.W.5 brought injured Kondammal, since deceased for treatment for injuries stated to have been sustained by her at about 4.00 p.m. on that evening at the hands of her son. When he examined her, he found her dead and accordingly pronounced her dead. Ex.P.6 is the report on her death. At about 7.05 p.m. on the same day P.W.1 appeared before him with a police head constable for treatment, for injuries stated to have been sustained by her at 4.00 p.m. on that evening in her house at the hands of a known person by the use of a knife. Ex.P.7 is the Accident Register issued by him for P.W.1, in which it is noted that the injured had suffered an incised wound on the left

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forearm 2 cm x ½ cm x ½ cm and the injury was found to be simple. P.W.10 continued his investigation further by examining witnesses and recording their statements. M.Os.4 to 6 removed from the dead body after post-mortem by P.W.9 and handed over to P.W.10 with his special report Ex.P.9, were recovered by P.W.10 under form 95. The case properties were sent to the Court with a requisition Ex.P.13 to subject the same for chemical examination. Exs.P.14 and P.15 are the Chemical Examiner's Report and Serologist's Report respectively. After completing all the other legal formalities P.W.10 filed the final report in Court against the accused under Sections 302 and 324 I.P.C.

6. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against him, he denied each and every circumstance put up against him as false and contrary to facts. He denied his involvement in toto. Exs.D.1 to D.3 came to be marked through him. Dr.Thiyagarajan was examined by the court as Court Witness No.1. His evidence is summarised as hereunder:-

> "I am now working in Government Hospital at Vellore; I am a post-graduate degree holder in Psychiatry; I examined Ramesh (the accused) sent to me pursuant to the court's order; Ramesh was admitted in the hospital on 18.6.2003 in the emergency ward and he was under observation till 7.7.2003; he was observed for any mental imbalance; his inpatient number is 22359; I found Ramesh having a mental sickness; he appeared to be suffering from schizophrenia; I found various symptoms on him; Ex.C.1 is the certificate issued by me and Ex.C.2 is the report given by me to the Dean of the Government Medical College Hospital. "

We extract the contents of Ex.C.1 hereunder:

"MEDICAL CERTIFICATE

(See sections 18 and 19 Act IV of 1912)

In the matter of Thiru S. Ramesh S/o. Samuel in the Town of Vaniyambadi (or the Sub-Division of Vellore) an alleged lunatic.

I, the undersigned Dr.N. Thiyagarajan do hereby Certify as follows:

I am (a Gazetted Officer) or a Medical Practitioner.

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A holder of MD.DPM or declared by Government.

Declared by Government to be a Medical Officer under
Medical Practitioner Under

Act IV of 1912 and I am in the actual practice of
Act IV of 1912

The Medical Profession

2. On the 8th day of July, 2003 at Government Vellore Medical College Hospital in the TOWN of Vellore (or the Sub-division
Village
of in the district of)

(Separately from any other Practitioner)

the said S.Ramesh I personally examined
the said S. Ramesh
and came to the conclusion that the said a lunatic and proper person to be taken charge of and detained under care and treatment.

3. I forward this conclusion on the following grounds viz:

(a) Facts indicating insanity observed by myself viz.

(b) Other facts (if any) indicating insanity communicated to be by others viz:

PSYCHIATRIC CLINIC
Govt. Vellore Medical
College Hospital,
Vellore-632 001.

Sd./
N. THIAGARAJAN, MD.DPM
Civil Surgeon and
Psychiatric Specialist.

A. Unkempt; Thin built, Quiet, withdrawn, talks less impulsive anger present, No hallucinatory behaviour express fear of being under black magic hence assault on mother with knife (to death) ; feels comfortable in prison; judgement reasoning impaired, mood of fear/sad concern on loss of mother; Sleep Normal; Appetite impaired.

B. Quiet; talks less, Sleeps well, does not take care of personal hygiene; No violent behaviour."

We extract the contents of Ex.C.2 heeunder:-

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Mr. Ramesh, S/o. Samual, Sessions Case NO.355/2002, directed by you for obsrvation for any evidence of mental illness was admitted by Casualty Medical Officer on 18.6.2003.

He was observed till 7.7.2003 as an inpatient No.22359.

He shows evidence of mental illness (Split mind disorder – Schizophrenia)

It is suggested to direct him for further management of mental illness under the care of Medical Superintendent, Institute of Mental Health, Kilpauk, Chennai-10."

7. Learned counsel appearing for the appellant would primarily contend that the evidence of C.W.1; Exs.C.1 and C.2 and Exs.D.1 to D.3 unerringly show that the appellant is suffering from split mind disorder namely, Schizophrenia and therefore when the occurrence is shown to have taken place, he was found to be suffering from the said mental disorder. If that is so, Section 84 of the Indian Penal Code would come to the rescue of the appellant and if the benefit of that section is extended to the appellant, then he cannot be punished for having committed any offence, including the offence of murder. Learned counsel by taking us through the evidence of P.W.1 when she was further cross examined on 4.12.2003 on being recalled, would submit that P.W.1 had denied any knowledge about the crime and also admitted that the accused was suffering from a mental ailment even on the date of occurrence. He would also take us through the evidence of P.W.4, which according to him, proves Exs.D.1 to D.3, to contend that the appellant was suffering from a mental disorder. Mr. N.R.Elango, learned Additional Public Prosecutor in meeting the points raised by the learned counsel for the appellant would contend that Exs.D.1 to D.3 cannot be taken to be proved, in the absence of the author of those three documents. In other words, formal proof before court is necessary before Exs. D.1 to D.3 could be admitted and evaluated in evidence. Learned Additional Public Prosecutor draws our attention to a statement made by the learned Sessions Judge in her judgement that the accused stated before her that he is mentally alright. Only in such circumstances, the learned Sessions Judge after referring the accused for medical examination regarding his mental ailment proceeded to continue the trial. From the evidence of C.W.1 and Exs.C.1 and C.2 it cannot be conclusively said that on the date of the crime, the accused was having a mental disorder. According to the learned Additional Public Prosecutor, to get the benefit of Section 84, it must be shown by the accused that on the

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day, when the accused was shown to have committed the crime, due to mental unsoundness, he could not know what he was doing is either wrong or opposed to law. Of course it is open to the accused to show that prior to the day on which the crime was committed and subsequent to that day also he was afflicted with such mental disorder, so that the court would be in a position to evaluate his mental capacity. In this case, there is total absence of any medical evidence to support the defence of the accused built on section 84 of the Indian Penal Code. Then referring to the evidence of P.Ws.1 and 4, when they were recalled and further cross examined on 4.12.2003, learned Additional Public Prosecutor would state that those evidence have come on record after the examination of C.W.1 in court. Under these circumstances no credibility at all could be given to such evidence.

8. In the light of the submissions made by the learned counsel on either side, we went through the entire materials on record. Since much is said about the mental condition of the accused on the date of the crime, we decided to take up that issue first. Ex.D.1 had been issued by the Mental Health Centre, Christian Medical College, Vellore. It gives the name of one Ramesh. It indicates that the re-consultation fee is due on 18.4.2001. It does not contain any other detail. Exs.D.2 and D.3 are identical in their contents. Both are issued by Mental Health Centre of Christian Medical College, Vellore. In Exs.D.2 and D.3 we find the name of one Ramesh. The contents of Ex.D.2 are as hereunder:-

> "Your next appointment for E.C.T./Psychotherapy/Review Psychometry is on 1.3.2001 at 11.30 a.m./p.m."

The words "Review" and "P.M." stand rounded off. This is dated 1.3.2001. Similar is the contents of Ex.D.3, except one change (i.e) the Psychometry test was fixed on 15.2.2001 at 11.45 a.m. P.W.4 is not a party to these three documents. He does not claim in his evidence that he took his son to the hospital when he was examined by the Doctor in the Christian Medical College Hospital and these three documents have come to be issued in his presence. In other words, from his evidence we do not find that he personally knows about it nor does he have any personal knowledge about the visit of the accused to the hospital. What all he states in his evidence at the end of the cross examination and further cross done on 4.12.2003 on being recalled respectively is as hereunder:-

> "It is true that my son was suffering from mental disorder since the last four years and taking treatment in the hospital at Baghayam; his O.P. ticket number is:- 090319.M"

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" My son was taking treatment for mental ailment in Baghyam Hospital for four years; the out patient ticket issued at that time is shown to me i.e Exs.D.1; Exs.D.2 and D.3 show the treatment taken by him prior to that; even during the occurrence time the accused was having mental imbalance and therefore he was taking treatment; he was kept in the house duly tied."

From the above evidence, it is not possible to conclude that P.W.4 knows anything personally about the treatment shown to have been given to his son. If at all Exs.D.2 and D.3 can be looked into, it would only show that the accused has to report at the hospital for some tests. We find that Exs.D.2 and D.3 indicate that the accused has to appear for Psychomentry test on 15.2.2001 (Ex.D.3) and on 1.3.2001(Ex.D.2). We went through Mosby's Medical Dictionary 2004 edition to find out what is meant by "Psychometry". The definition is at page 941 of that dictionary, which reads as hereunder:

"Psychometrics: The development, administration or interpretation of psychologic and intelligence tests. Also called psychometry."

Therefore going by the definition of "Psychometrics" which is also called "Psychometry", it appears that the accused was asked to appear on the respective dates for an intelligence test. It must be noted that the Psychometry tests were on 15.2.2001 and 1.3.2001. The occurrence was on 24.2.2002. There is nothing on record to show that the accused appeared on the respective dates in the hospital for the psychometry test. No doctor from the Christian Medical College Hospital, Vellore, who could have conducted the psychometry test on the accused on 15.2.2001 or 1.3.2001, had been examined. Not even a staff of the hospital had been examined. We have already noted that P.W.4 is not a party to Exs.D.1 to D.3. No Doctor or any staff connected with the hospital, which had issued Exs.D.1 to D.3 have been examined. In our considered opinion, Exs.D.1 to D.3 require formal proof. The accused had not even relied upon Exs.D.1 to D.3 when he was questioned under Section 313 of the Code of Criminal Procedure. We find from his answers during questioning that he has a clarity of mind and he was clear in his thoughts. He had not even taken any stand when he was questioned under Section 313 of the Code of Criminal Procedure that as he was suffering from a mental disorder, he committed the offence on 24.2.2002. Under the code of Criminal Procedure only certain documents can be proved without formal proof. If any document has to be marked without formal proof, then the requirement of Section 294 of the Code of Criminal Procedure ought to have been complied with. But that had not been complied with in this case. Under

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Section 293 of the Code of Criminal Procedure only certain reports of scientific experts enumerated therein alone can be admitted in evidence, as a matter of course. Exs.D.1 to D.3 are not covered under Section 293 of the Code of Criminal Procedure. If any body from the hospital, which issued Exs.D.1 to D.3 had been examined, then the State would have had the opportunity to test the correctness of the defence based on Section 84 of I.P.C. It is needless to state that when an accused takes a defence based on Section 84 of I.P.C., then the initial burden is on him. Therefore looking from any angle, it is not possible for this court to act upon Exs.D.1 to D.3 to conclude that the accused was having a mental disorder on the day when he committed the crime.

9. Let us now complete our discussion on the argument built upon by the learned counsel for the appellant on Section 84 of the Indian Penal Court by analysing the evidence of C.W.1 as well. Before proceeding to analyse the evidence, we went through the judgement to find out why the accused in the course of trial was sent for medical examination. From para 9 of the judgement under challenge, we find that after the examination of P.Ws.1 to 9, the defence counsel have filed a petition to recall P.W.4 and in that petition, it was stated that the accused is a mentally ill person. Only on that statement made in the petition to recall P.W.4, the Court had rightly referred the accused for medical examination since under Section 329 of the Code of Criminal Procedure, a procedure is contemplated to be followed when it appears to the court that when a person facing trial is of unsound mind and consequently incapable of making his defence. It is also seen from para 9 of the trial court judgement that the accused was examined by a Doctor, who was examined in court as C.W.1. Then the court, it is seen from para 9 of the judgement, directed the accused to be sent to Mental Health Centre at Kilapauk by passing an order on 5.8.2003. When the case was directed to be called on 10.12.2003, to await the report of the Mental Health Centre, Kilpauk, the accused appeared before court stating that he was mentally alright. Only in such circumstances the learned Sessions Judge proceeded to continue the trial. There is no further medical record touching upon the insanity of the accused. We have to state that Section 84 of the Indian Penal Code and Sections 328 and 329 of the Code of Criminal Procedure operate in two different spheres. Section 84 of the Indian Penal Code deals with the mental condition of the assailant at the time of committing the crime. Sections 328 and 329 prescribe the procedure to be followed when during trial it was made to appear to the court that the person accused is mentally unsound and consequently he is unable to defend. Any finding rendered in favour of the accused in an enquiry held under Section 329 of Cr.P.C., would not necessarily mean that the accused was suffering a mental ailment during the commission of the crime. Let us now go through the evidence of C.W.1. We have already extracted

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his evidence. When he was cross examined, this witness had categorically asserted that he cannot state what was the mental condition of the accused on 24.2.2002. It must be noticed that 24.2.2002 is the day on which the crime was committed. Even then we perused Exs.C.1 and C.2 to find out whether there are any materials in favour of the accused to show that he was mentally unsound on the date of the crime. We have extracted the contents of Ex.C.1. It only shows that the accused was having some delusions. Of course, in Ex.C.1, the Doctor had gone one step further to state that "being under black magic - hence assault on mother." We have no doubt that the Doctor namely, C.W.1 had no authority to give such an opinion in Ex.C.1. What he was expected to do is to examine the patient referred to him on his mental condition and give a report one way or the other. But what ever it is, the opinion of the Doctor in Ex.C.1 that only due to the mental condition the accused assaulted his mother stands nullified by his evidence in cross as referred to above, where he had admitted that he cannot say anything about the mental condition of the accused on 24.2.2002, the date on which the occurrence took place. Of course in Ex.C.2 the Doctor had observed that the accused is having a mental illness namely, Split mind disorder - schizophrenia. It must be noticed that the accused was admitted in the hospital on 18.6.2003 and he was observed till 7.7.2003. The occurrence was on 24.2.2002. There is no evidence at all to show that at any time prior to the date of the commission of the crime, the accused displayed a bizarre behaviour. In any event, from Exs.C.1 and C.2 coupled with Exs.D.1 to D.3 it is not possible for this court to hold that on 24.2.2002 the accused was of unsound mind.

In the 29th Edition of Dorland's Illustrated Medical Dictionary, Schizophrenia is defined to mean as follows:

> "A mental disorder or heterogeneous group of disorders comprising most major psychotic disorders and characterized by disturbances in form and content of thought; behaviour (bizarre, apparently purposeless and stereotyped activity or inactivity); clinical application of the concept of schizophrenia vary greatly; DSM-IV criteria emphasize marked disorder of thought (delusions, hallucinations or other thought disorder accompanied by disordered affect or behaviour) and deterioration from a previous level of functioning and chronicity (duration of more than six months). Schizophrenia is also defined to be a serious mental illness in which the way one think and feel is not connected with what is really happening. It is stated to be a relatively uncommon neurological brain disorder. Typical behaviour seen in schizophrenia includes psychotic episodes in which there is a severe mental

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disturbance and perceptions of reality are distorted. Psychotic episodes may also involve hallucinations. Schizophrenics often have delusions about personal identity, immediate surroundings or society, and paranoia. "

At the risk of repetition we once again state that there is no evidence at all to show that either before or during or after the commission of the crime the accused manifested any bizarre behaviour. The authors namely, Clifford T.Morgan and three others, in their book Introduction to Psychology, 7th Edition, have stated that the style of speech and the thinking it reflects are some of the features of schizophrenia and schizophrenics often have delusions. The book also says that schizophrenic may have hallucinations most commonly auditory hallucinations and that they may hear a single voice continually commenting on their behaviour or multiple voices arguing and shouting profanities at each other. The above mentioned details are the broad indications of the features of schizophrenia.

10. The Hon'ble Supreme Court of India in the judgment reported in 2003-2-L.W.(Crl.) Pg.682 (Shrikant Anandrao Bhosale Vs. State of Maharashtra) was considering a defence set up by the accused based on section 84 of the Indian Penal Code. The ailment in that case is indicated to be paranoid schizophrenia. In detailing the features of schizophrenia, the Supreme Court had stated as hereunder:

"Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develops into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from prosecutory to the grandiose type."

In that case, the Supreme Court had also said that the burden to prove that the accused was of unsound mind is on himself. The Supreme Court had stated as hereunder:

"The burden to prove that the appellant was of unsound mind and as a result thereof he was incapable of knowing the consequences of his acts is on the defence.

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> Section 84 IPC is one of the provision in Chapter IV, IPC which deals with "general exceptions." That section provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. The burden of proving the existence of circumstances bringing the case within the purview of section 84 lies upon the accused under section 105 of the Indian Evidence Act. Under the said section, the court shall presume the absence of such circumstances."

The Supreme Court went on to hold that from the circumstances established in that case, it can be inferred that the accused had unsoundness of mind. The Supreme Court, in this context, had held as hereunder:

> "The unsoundness of mind as a result whereof one is incapable of knowing consequences is a state of mind of a person which, ordinarily can be inferred from the circumstances. If, however, an act is committed out of extreme anger and not as a result of unsoundness of mind, the accused would not be entitled to the benefit of exception as contained in Section 84 I.P.C."

It is also stated in that judgment as hereunder:

> "Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception."

On the medical evidence available in that case, the Supreme Court held that it stands proved that there was unsoundness of mind preceding occurrence and following the occurrence. It also held that unsoundness of mind before and after incident is a relevant fact and from the established circumstances in that case, an inference can be reasonably drawn that the appellant was under a delusion at the relevant time. The details of the medical treatment, which the accused in that case had, are noted in that judgment. But in the case on hand namely, one heard by us, we have Exs.D.1 to D.3; Exs.C.1 and C.2 and the oral evidence of C.W.1, besides the evidence of P.Ws.1 and 4 when they were further cross examined as indicated earlier. We have already noted that Exs.D.1 to D.3 relate to the period 2001. The occurrence in this case was on 24.02.2002. We have already found that there is no evidence to show that pursuant to Exs.D.1 to D3, the accused appeared in the hospital for any treatment and whether he made any progress at all thereafter. In other words, whether his condition deteriorated or whether it has improved, there is no evidence.

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Exs.C.1 and C.2 relate to the period July 2003. Once again, we find that there is absolutely no material to show what was the mental condition of the accused from the date on which the crime was committed till he came to be examined by Court Witness No.1. C.W.1 had also admitted categorically, as referred to, earlier that he cannot say with any certainty the mental condition of the accused on the day of commission of the crime. Therefore there is absolutely no evidence to show that when was the on set of the deceased in this case on the appellant. The possibility of setting in of the ailment on the appellant after the commission of the crime do not stand totally ruled out. Therefore, from the medical evidence made available in this case, it is not possible for us to conclude emphatically that the accused had any such mental disorder on the day of the occurrence, which would have made him not to realise what he was doing is either wrong or opposed to law.

11. P.Ws.1 to 4, when they were further cross examined on 4.12.2003 on they being recalled deposed that the accused was having a mental disorder. In our considered opinion and in the face of the medical evidence referred to above, this evidence cannot hold good for the accused. To attract Section 84 of the Indian Penal Code, it must be shown that the assailant namely, the accused at the time of committing the crime, by reason of unsoundness of mind, is incapable of knowing the nature of the act , or that he is doing what is either wrong or contrary to law. On the facts of this case we find that the answers are against the accused. It is clear from the evidence of P.W.1 that the accused was pestering his mother to give some share from out of the monetary retirement benefits she received from her employer namely, a Hospital at Vaniyambadi. Therefor it is clear that the accused was very clear in his mind on his rights. P.W.1's evidence shows that after committing the crime, the accused dropped the weapon and ran away from the crime scene. If really he was of such unsound mind, he could not have run away from that place. His conduct of running away from the place definitely shows that he was duly aware that what he has done was wrong and that it is contrary to law. It has also come out in the evidence of P.W.1 that whenever the accused asked for his day-to day expenses from his mother, sometimes she used to give, sometimes she would not and on all those occasions, when he could not get money from his mother as demanded, he would pick up a quarrel. This again shows that the accused was clear in his mind and thoughts (i.e.) that he would be pleased whenever his mother gives money and he would be annoyed whenever his mother won't give him money. P.W.2's evidence also shows the same mental clarity namely, the accused asserting his rights to have a share from the retirement benefits of his mother. So is the evidence of P.Ws.3 and 4. Such conduct on the part of the accused namely, as referred to above cannot be due to anything

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other than he being mentally alert. We already noted his mental clarity from his answers during questioning. Under these circumstances we are of the considered opinion that the defence built upon by the accused on section 84 of the Indian Penal Code cannot be sustained.

12. Coming to the oral evidence of the witnesses about the crime, we find that though P.W.1 supported the prosecution in her evidence in chief and in cross when it was completed on 11.6.2003, yet, she chose to support the defence when she was examined on being recalled on 4.12.2003. Unfortunately we find that the State had not chosen to treat her as hostile and then cross examine her. P.W.4 also likewise, while he was further cross examined on being recalled on 4.12.2003, deposed that his son was mentally unsound. He did not go back on his evidence recorded earlier that he witnessed the crime namely, the accused perpetrating the crime on his wife. P.Ws.2 and 3 have supported the prosecution case. Under these circumstances having regard to the overwhelming evidence of P.Ws.2,3 and 4 on the one side and the evidence of P.W.1, which had come to be recorded on 4.12.2003, we are of the opinion that this court can easily reject the evidence of P.W.1 as having been won over and accept the evidence of P.Ws.2 to 4, which unerringly establish the guilt of the accused. Any amount of cross examination of P.Ws.2 to P.W.4 done by the defence could not end in any answer in favour of the accused as far as the crime proper is concerned. There is medical evidence to show that Kondammal died due to homicidal violence and P.W.1 had suffered injury at the hands of the accused. Since P.W.1 did not support the prosecution case by going to the extent of saying that she did not see the occurrence, we have no doubt at all that the conviction of the accused under Section 324 I.P.C. vis a vis causing an injury on P.W.1 cannot be legally sustained. Accordingly the accused is acquitted of the offence under Section 324 I.P.C. But that does not mean, as already stated, there is no evidence against the accused regarding the charge under Section 302 I.P.C. The evidence in that regard is overwhelming in nature. We have already held that the accused is not entitled to the benefit of Section 84 of the Indian Penal Code. Therefore we conclude saying that in the context of the oral evidence of P.Ws.2 to 4, which show the involvement of the accused in the crime, we have no hesitation at all to confirm the judgement under challenge so far as it relates to the conviction of the appellant under Section 302 I.P.C.

13. Under these circumstances and in the light of our discussion as referred to above, the appeal stands disposed of as hereunder:

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"The appellant is acquitted of the offence under Section 324 I.P.C. Fine amount, if any paid for the said offence is directed to be refunded to him. However the conviction of the appellant under Section 302 I.P.C. is sustained and the judgement under challenge to that extent is sustained."

Tr/vsl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge, Vellore.
2. The District Collector, Vellore.
3. The Director General of Police, Chennai.
4. The Public Prosecutor, High Court, Madras-104.
5. The Superintendent, Central Prison, Vellore.
6. The State rep. by its Inspector of Police
   Vaniyambadi Police Station, Vellore District.

1 cc to Mr.G.Natarajan, Advocate, SR.29200

sgl (co)

dv/25.8.06

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